

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL WILLIAMS a/k/a	:	CIVIL ACTION
MICHAEL McPHERSON,	:	
Plaintiff	:	
	:	
v.	:	
	:	
JERRY BRICKER ET AL.,	:	
Defendants	:	No. 96-1532

Memorandum and Order

VanArtsdalen, S.J.

Plaintiff Michael Williams, a state prisoner currently incarcerated at SCI Graterford, has instituted this §1983 action alleging that defendants acted with deliberate indifference to his medical needs. Plaintiff's complaint asserts claims against the maintenance supervisor at the prison¹, as well as several named and unnamed doctors. Defendant Norman Barry Stempler, D.O. has moved for summary judgment, and for the reasons set forth below, that motion will be granted.

Factual Background

Plaintiff's claims arise from injuries he sustained when he slipped and fell down a flight of prison stairs in March 1994. Plaintiff alleges that as a result of the fall, he injured, inter alia, his left hip, his left thigh, and his lower back. Plaintiff asserts that although he complained of his

¹Plaintiff's claims against Jerry Bricker, the maintenance supervisor at SCI Graterford, were dismissed as frivolous by an order entered February 29, 1997.

injuries to defendants, defendants acted with deliberate indifference to his medical needs.

Prior to seeing defendant Stempler, plaintiff had seen two other doctors at the prison, who had prescribed medication. Beginning in November 1994, defendant Stempler examined plaintiff on several occasions. At the first visit, Stempler reviewed an x-ray of plaintiff's left hip, and found tissue swelling. Over the course of several more examinations, plaintiff continued to complain of pain, and Stempler prescribed a series of treatments including heat treatments and injections of anti-inflammatory medication. In September 1995, plaintiff received surgery to remove the swollen tissue. Subsequent to the surgery, defendant Stempler examined plaintiff on two more occasions. Plaintiff continued to complain of pain, and in October 1995, Stempler informed plaintiff that "there was no more that he could do." (Plaintiff's dep. at 27).

Legal Standard

A motion for summary judgment is appropriate only when there is no genuine issue of material fact, and one party is entitled to judgment as a matter of law. Williams v. Borough of West Chester, 891 F.2d 458, 463-64 (3d Cir. 1989). In a motion for summary judgment, the court may examine evidence beyond the pleadings. The court must always consider the evidence, and the inferences from it, in the light most favorable to the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Tigg Corp. v. Dow Corning Corp., 822 F.2d 358, 361 (3d Cir.

1987); Baker v. Lukens Steel Co., 793 F.2d 509, 511 (3d Cir. 1986). If a conflict arises between the evidence presented by both sides, the court must accept as true the allegations of the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). For a dispute to be "genuine," a reasonable fact finder must be able to return a verdict (or render a decision) in favor of the non-moving party. Anderson, 477 U.S. at 248.

Discussion

Plaintiff's §1983 action is premised on the allegation that defendant Stempler subjected him to cruel and unusual punishment in violation of the Eighth Amendment. The Supreme Court, in Estelle v. Gamble, 429 U.S. 97, 104 (1976), recognized that deliberate indifference to the serious medical needs of prisoners does constitute the "'unnecessary and wanton infliction of pain' . . . proscribed by the Eighth Amendment." The court cautioned, however, that every claim of inadequate medical treatment does not establish a violation of the Eighth Amendment. See id. at 105.

The Third Circuit has interpreted Estelle as establishing a two part test for deliberate indifference claims that "requires deliberate indifference on the part of prison officials and [that] requires the prisoner's medical needs to be serious." Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988). It is clear that medical malpractice alone does not give rise to a constitutional violation. See White v. Napoleon,

897 F.2d 103 (3d Cir. 1990); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1081 (3d Cir. 1977); Unterberg v. Correctional Med. Sys., Inc., 799 F. Supp. 490, 497 (E.D. Pa. 1992). Rather, "the indifference must be deliberate and the actions intentional." Hampton, 546 F.2d at 1081.

The parties do not dispute that plaintiff complained of pain and sought medical treatment. Plaintiff's own deposition testimony establishes, however, that defendant Stempler examined plaintiff on numerous occasions and prescribed a variety of treatments, including surgery, for plaintiff's injuries. Plaintiff apparently believes that defendant should have done more, but it is well established that an inmate has no constitutional right to the medical treatment he requests. See Nolt v. R.N. Nauroth, 1990 WL 109196, at *5 (E.D. Pa.); Holly v. Rapone, 476 F. Supp. 226, 233 (E.D. Pa. 1979). Plaintiff's claims against defendant Stempler amount to no more than allegations of "neglect, carelessness, or malpractice . . . [which are] . . . more properly the subject of a tort action in the state courts." Hampton, 546 F.2d at 1081. The claims clearly do not rise to the level of a constitutional violation.

In an apparent attempt to avoid this conclusion, plaintiff asserts in his response to the instant motion that his complaints of lower back pain were not addressed. Plaintiff apparently seeks to prove that although defendant Stempler treated plaintiff's hip injury, defendant was deliberately indifferent to plaintiff's back injury. Plaintiff contends that

prison officials are withholding medical records which would reveal that plaintiff did complain of lower back pain. Even assuming that plaintiff did inform defendant Stempler of the lower back pain, the evidence is still insufficient to establish a genuine issue of material fact.

Plaintiff has adduced no evidence that defendant's alleged failure to treat his back injury was deliberate or intentional. It is more likely that the treatments defendant prescribed, including anti-inflammatory medication, were addressed to all of plaintiff's complaints. Furthermore, Estelle requires that the prisoner's medical condition be "serious" in order to establish an Eighth Amendment violation. See Jones v. Nauroth, 1994 WL 189006, at * 1 (E.D. Pa.). Plaintiff has failed to offer any evidence that his back condition constitutes a serious medical condition. Accordingly, I find that defendant Stempler is entitled to summary judgment.

An appropriate order follows.

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Defendants	:	No. 96-1532

ORDER

For the reasons set forth in the accompanying memorandum, IT IS ORDERED that defendant Norman B. Stempler's motion for summary judgment (filed document number 40) is GRANTED.

IT IS FURTHER ORDERED that judgement is entered in favor of defendant Norman B. Stempler and against plaintiff Michael Williams.

BY THE COURT,

Donald W. VanArtsdalen, S.J.

July 31, 2003